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10/054,257	01/22/2002	Frederick R. Bean	TN-2239	3692

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Adan Ayala, Esq.
Black & Decker Inc.
701 E. Joppa Road, TW-199
Towson, MD 21286

EXAMINER

NGUYEN, PHONG H

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FREDERICK R. BEAN, PETER CHAIKOWSKY,
ROBERT P. WELSH, CRAIG A. OKTAVEC, MARK E. BRUNSON,
JAMES R. PARKS, GREGG L. SHEDDY and ADAN AYALA

Appeal 2009-1211
Application 10/054,257
Technology Center 3700

Decided: ¹ May 14, 2009

Before WILLIAM F. PATE III, LINDA E. HORNER
and STEVEN D.A. McCARTHY, *Administrative Patent Judges*.

McCARTHY, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304 (2008), begins to run from the Decided Date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or the Notification Date (electronic delivery).

1 The Appellant appeals under 35 U.S.C. § 134 (2002) from the final
2 rejection of claim 13 under § 103(a) as being unpatentable over Chen (US
3 5,778,747, issued Jul. 14, 1998) and Meredith (US 5,957,021, issued Sep.
4 28, 1999). We have jurisdiction under 35 U.S.C. § 6(b) (2002).

5 We REVERSE.

6 Claim 13 is the sole claim on appeal:

7
8 13. A chop saw comprising:
9 a base assembly; and
10 a saw assembly pivotably attached to the
11 base assembly, the saw assembly comprising an
12 upper blade guard, a plate rotatably attached to the
13 upper blade guard, a lower blade guard rotatably
14 attached to the plate, and a screw engaging the
15 upper blade guard for fixing the plate;
16 wherein at least one of the upper blade guard
17 and plate have a first tab disposed near the screw
18 and extending outwardly and substantially
19 perpendicularly to the at least one of the upper
20 blade guard and plate, the first tab extending from
21 the at least one of the upper blade guard and plate
22 a first distance, the screw being required to be
23 moved a second distance longer than the first
24 distance in order to pivot the plate so that the lower
25 blade guard contacts the screw upon rotation of the
26 lower blade guard,
27 wherein the lower blade guard contacts the
28 screw upon rotation of the lower blade guard after
29 the screw has been moved the second distance.
30

31 The Examiner finds that Chen discloses each limitation of claim 13
32 except for the limitations expressed in the “wherein” clauses. (*See* Ans. 3).
33 The Examiner concludes that it would have been obvious to provide Chen’s

1 face plate a first tab as taught by Meredith for forcing the user to withdraw
2 the fastener a sufficient amount to allow the plate to be pivoted. (Ans. 3).

3 The Examiner further concludes that, “[d]ue to the small tolerance
4 between the plate and the lower guard, as the screw is moved a second
5 distance, the lower guard contacts the screw upon the rotation of the lower
6 guard.” (Ans. 3; *see also* Final Office Action, Jun. 26, 2007 at 2). The
7 Examiner concludes that:

8
9 In Chen’s saw assembly, there is a small tolerance
10 between the rotatable lower blade guard 142 and
11 the plate 88; and the screw has a length that is
12 much longer than the thickness of the plate 88 and
13 the tolerance between the rotatable lower blade
14 guard 142 and the plate 88 (see Figs. 1 and 3, and
15 the first sketch). . . . Therefore, when the screw is
16 withdrawn to a second distance, the screw contacts
17 the rotatable lower blade guard 142
18

19 (Ans. 4). At one point, the Examiner appears to go so far as to find that the
20 tolerance between the rotatable lower blade guard and the face plate of
21 Chen’s miter saw is between $\frac{1}{16}$ inch and $\frac{1}{8}$ inch (*see id.*) even though Chen
22 does not appear to describe or show dimensions of any parts of the miter
23 saw.

24 The Examiner finds that Chen does not disclose a first tab as recited in
25 claim 1. (Ans. 3). Neither does Chen disclose or suggest the distance that a
26 screw attaching Chen’s face plate to the upper blade housing might have to
27 be loosened to allow such a tab to clear the screw in order to pivot the face
28 plate. The Examiner does not appear to find that any loosening of a screw
29 attaching Chen’s face plate to the upper blade housing, however small,

1 would cause the lower blade guard to contact the screw upon rotation of the
2 lower blade guard. Chen does not describe the tolerance between the face
3 plate and the lower blade housing as being so small that, as the screw is
4 moved the second distance, the lower blade housing necessarily contacts the
5 screw upon the rotation of the lower blade housing.

6 The Examiner finds that Meredith does not disclose contact between
7 a screw engaging the upper blade guard for fixing the plate and a lower
8 blade guard. (Ans. 4). The Examiner articulates no reasoning to support the
9 conclusion that the teachings of Chen and Meredith would have provided
10 one of ordinary skill in the art reason to modify Chen's miter saw so that
11 moving a screw a distance longer than the distance the tab would extend
12 from the face plate would result in the lower blade housing contacting the
13 screw upon rotation of the lower blade housing. Absent such reasoning, the
14 conclusion of obviousness is not sustainable. *See In re Kahn*, 441 F.3d 977,
15 988 (Fed. Cir. 2006).

16 The Appellants have shown that the Examiner erred in rejecting claim
17 13 under § 103(a) as being unpatentable over Chen and Meredith.

18
19 **DECISION**

20 The Examiner's rejection of claim 13 is REVERSED.

21
22 **REVERSED**

23
24 mls
25
26

Appeal 2008-1211
Application 10/054,257

1 ADAN AYALA, ESQ.
2 BLACK & DECKER INC.
3 701 E. JOPPA ROAD, TW-199
4 TOWSON, MD 21286